

City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 8

Ordinance/Resolution# 11-12-303

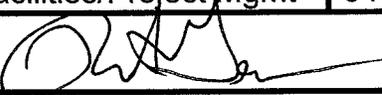
For Meeting of _____
(Ordinance First Reading Date)

For Meeting of July 18, 2011
(Adoption Date)

TITLE: A RESOLUTION AWARDING ONE YEAR TERM CONTRACTS FOR ARCHITECTURAL AND ENGINEERING SERVICES, RFP NUMBER 11-12-303, TO ASA ARCHITECTS, STUDIO D ARCHITECTS, PA, AND WILLIAMS DESIGN GROUP INC., ALL OF LAS CRUCES, NM, FOR CONTRACT AMOUNTS NOT TO EXCEED CITY COUNCIL APPROVED BUDGETS.

PURPOSE(S) OF ACTION:

To award term contracts for architectural and engineering services.

| | | |
|---|---|----------------------------------|
| COUNCIL DISTRICT: ALL | | |
| <u>Drafter/Staff Contact:</u> Tomas Mendez, Architect | <u>Department/Section:</u> Facilities/Project Mgmt | <u>Phone:</u> 541-2583 |
| <u>City Manager Signature:</u> |  | |

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces solicited proposals for architectural and engineering services in support of completing various building projects including facilities and parks maintenance projects. The contract will provide general architectural and engineering design services including programming, building design, construction document preparation, construction contract administration and assistance with bidding and negotiation of construction contracts.

The request for proposals resulted in receipt of nine (9) proposals on May 13, 2011. The Selection Advisory Committee (SAC) evaluated the nine (9) proposals on June 14, 2011. In issuing the RFP the SAC established that contracts will be awarded to the top three rated firms; subsequently the SAC recommends award of the term contracts for architectural and engineering services to ASA Architects, Studio D Architects, PA, and Williams Design Group Inc. The contract duration for each firm is one year, renewable at the City's option for a maximum of three additional one year terms. The individual work orders issued through each firm's contract will be funded by City Council approved budgets at the time the scope of work of a particular work order is identified.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A" - Purchasing Manager's Request to Contract.
3. Exhibit "B" - SAC RFP Evaluation Sheet.
4. Exhibit "C" - Draft Agreement between City and Architect.

(Continue on additional sheets as required)

SOURCE OF FUNDING:

| | | | |
|---|-----------------------------------|-------------------------------------|--|
| Is this action already budgeted? N/A | Yes | <input type="checkbox"/> | See fund summary below |
| | No | <input type="checkbox"/> | If No, then check one below: |
| | <i>Budget Adjustment Attached</i> | <input type="checkbox"/> | Expense reallocated from: _____ |
| | | <input type="checkbox"/> | Proposed funding is from a new revenue source (i.e. grant; see details below) |
| | | <input type="checkbox"/> | Proposed funding is from fund balance in the _____ Fund. |
| Does this action create any revenue? | Yes | <input type="checkbox"/> | Funds will be deposited into this fund: in the amount of \$ _____ for FY _____ |
| | No | <input checked="" type="checkbox"/> | There is no new revenue generated by this action. |

BUDGET NARRATIVE

| |
|-----|
| N/A |
|-----|

FUND EXPENDITURE SUMMARY:

| Fund Name(s) | Account Number(s) | Expenditure Proposed | Available Budgeted Funds in Current FY | Remaining Funds | Purpose for Remaining Funds |
|--------------|-------------------|----------------------|--|-----------------|-----------------------------|
| N/A | N/A | N/A | N/A | N/A | N/A |

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will authorize the City to enter into term contracts with ASA Architects, Studio D Architects, PA, and Williams Design Group Inc., all of Las Cruces, NM, for architectural and engineering services for contract amounts not to exceed City Council approved budgets.
2. Vote "No"; this will not authorize the City to enter into term contracts with ASA Architects, Studio D Architects, PA, and Williams Design Group Inc., all of Las Cruces, NM, for architectural and engineering services for contract amounts not to exceed City Council approved budgets.
3. Vote to "Amend"; this will direct staff to proceed as amended by City Council.
4. Vote to "Table"; this would direct staff to pursue other options in procuring professional architectural and engineering services for the completion of various upcoming building renovation and maintenance projects.

REFERENCE INFORMATION:

N/A

(Continue on additional sheets as required)

RESOLUTION NO. 11-12-303

A RESOLUTION AWARDING ONE YEAR TERM CONTRACTS FOR ARCHITECTURAL AND ENGINEERING SERVICES, RFP NUMBER 11-12-303, TO ASA ARCHITECTS, STUDIO D ARCHITECTS, PA, AND WILLIAMS DESIGN GROUP INC., ALL OF LAS CRUCES, NM, FOR CONTRACT AMOUNTS NOT TO EXCEED CITY COUNCIL APPROVED BUDGETS.

The City Council of the City of Las Cruces is informed that:

WHEREAS, the City of Las Cruces solicited proposals for architectural and engineering services in support of completing various building projects including facilities and parks maintenance projects; and

WHEREAS, the contract will provide general architectural and engineering design services including programming, building design, construction documents preparation, construction contract administration and assistance with bidding and negotiation of construction contracts; and

WHEREAS, the request for proposals resulted in receipt of nine (9) proposals on May 13, 2011, and the Selection Advisory Committee (SAC) evaluated the nine (9) proposals on June 14, 2011; and

WHEREAS, in issuing the RFP the SAC established that contracts will be awarded to the top three (3) rated firms; subsequently the SAC recommends award of the term contracts for architectural and engineering services to ASA Architects, Studio D Architects, PA, and Williams Design Group Inc; and

WHEREAS, the individual work orders issued through each firm's contract will be funded by City Council approved budgets at the time the scope of work of a particular work order is identified.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las

Cruces:

(I)

THAT one (1) year term contracts are hereby awarded to ASA Architects, Studio D Architects, PA, and Williams Design Group Inc, all of Las Cruces, NM for architectural and engineering services for contract amounts not to exceed City Council approved budgets, renewable at the City's option for a maximum of three (3) additional one (1) year terms.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE and APPROVED this _____ day of _____, 2011.

ATTEST:

APPROVED:

City Clerk

Mayor

(SEAL)

VOTE:

Mayor Miyagishima: _____

Councillor Silva: _____

Councillor Connor: _____

Councillor Pedroza: _____

Councillor Small: _____

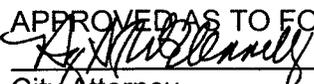
Councillor Sorg: _____

Councillor Thomas: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney

CITY OF LAS CRUCES

PURCHASING MANAGER'S REQUEST TO CONTRACT

For Meeting of: July 18, 2011

Resolution No.: 11-12-303

Contract Purchase For Architectural and Engineering Services

The Las Cruces City Council is provided the following information concerning this request:

RFP SOLICITATION INFORMATION:

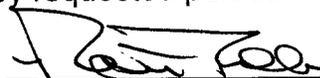
- 1. RFP No./ Due Date: RFP No. 11-12-303/May 13, 2011
- 2. Description: Architectural and Engineering Services
- 3. Using Department: Facilities
- 4. Number of Responses Accepted: Nine (9)
- 5. Award Recommendation To: ASA Architects, Studio D Architects, PA and
Williams Design Group Inc., all of Las Cruces, NM
- 6. Total Award Amount: Indefinite not to exceed City Council approved budgets
- 7. Contract Duration: One year with three additional one-year renewal options

LOCAL PREFERENCE FACTOR

| | | | |
|--|-----|---|--|
| Local Preference Factor Applied Per LCMC §24-100 | No | | LCMC §24-100 not applicable to this solicitation |
| | Yes | x | Made A Difference To Awards(s) |
| | | | |

PROCUREMENT CODE COMPLIANCE:

The City of Las Cruces Procurement Code was administered in the conduct of this procurement and approval to purchase is hereby requested pursuant to **Section 24-92.**


 Purchasing Manager 12/1/2011
Date

CONFIRMATION OF FUND ENCUMBRANCE:

| | |
|---------------------------------------|---------|
| REQUISITION or PURCHASE ORDER NUMBER: | Various |
|---------------------------------------|---------|

PHASE I - PROPOSAL EVALUATION REPORT

TITLE: Term Contract for Architectural-Engineering Services
RFP NO.: 11-12-303

| CRITERIA | POINTS DISTRIBUTION | | | | | | TOTAL POINTS POSSIBLE |
|---|---------------------|----------------|------------------------------|---------------------|--------------------------------|------------------------|-----------------------|
| | ASA Architects | Conron & Woods | Dekker/Perich/Sabatini, Ltd. | Huitt-Zollars, Inc. | Parkhill, Smith & Cooper, Inc. | Steve Newby Architects | |
| Technical Approach | 560 | 500 | 480 | 640 | 520 | 520 | 3000 |
| Qualifications/Competence | 725 | 600 | 675 | 700 | 600 | 650 | 1000 |
| Capacity/Capability | 280 | 600 | 700 | 675 | 650 | 625 | 400 |
| Management Structure/Approach | 290 | 210 | 260 | 260 | 250 | 250 | 400 |
| References | 310 | 230 | 250 | 220 | 260 | 230 | 400 |
| Clarity | | 240 | 260 | 260 | 250 | 260 | |
| Rating Sheets Raw Scores | 2890 | 2380 | 2615 | 2755 | 2530 | 2525 | 4000 |
| Subtract Highest Scorer | 400 | 350 | 370 | 420 | 400 | 370 | |
| Subtract Lowest Scorer | 310 | 230 | 245 | 255 | 265 | 240 | |
| Rating Sheet Net Score | 2180 | 1800 | 2000 | 2080 | 1865 | 1915 | |
| Top Net Score Minus 10% | 1962.0 | 1620.0 | 1820.0 | 1872.0 | 1678.0 | 1723.5 | |
| Qualifies for Interview or Phase II of Evaluation | Yes | No | Yes | Yes | No | No | |
| PHASE I - INTERVIEW EVALUATION RESULTS | 0 | 0 | 0 | 0 | 0 | 0 | |
| TOTAL PHASE I SCORES | 2180 | 1800 | 2000 | 2080 | 1865 | 1915 | |
| TOP PHASE I SCORE | 2180 | 2180 | 2180 | 2180 | 2180 | 2180 | |
| TOP PHASE I SCORE MINUS 10% | 1962.0 | 1620.0 | 1820.0 | 1872.0 | 1678.0 | 1723.5 | |
| PROCEED TO PHASE II EVALUATION | PROCEED | PROCEED | PROCEED | PROCEED | PROCEED | PROCEED | |

PHASE II - EVALUATION REPORT

DEDUCTION FOR PROJECTS IN PROGRESS

| | | | | | | |
|--|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|
| Number of Committee Raters | 8 | 8 | 8 | 8 | 8 | 8 |
| CLC Projects in Progress by Respondent | | | | | | |
| Deduction (10 points per project X number of raters) | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL PH. I & II SCORES W/O PREFERENCE | 2180 | 1800 | 2000 | 2080 | 1865 | 1915 |
| LOCAL/STATE PREFERENCE | Local ? (Yes or No) |
| LOCAL? (YES or NO) | Yes | Yes | Yes | Yes | Yes | Yes |
| If "YES", Add (Total Phase I Score X .05%) | 109.0 | 100.0 | 100.0 | 104.0 | 93.25 | 95.75 |
| TOTAL PH. I & II SCORES W/O COST FACTOR | 2289.0 | 1800.0 | 2000.0 | 2080.0 | 1865.0 | 1915.0 |

| PHASE I - PROPOSAL EVALUATION REPORT | | | |
|---|-----------------------|-------------------------|-----------------------|
| TITLE: Term Contract for Architectural-Engineering Services | | | |
| RFP NO.: 11-12-303 | | | |
| CRITERIA | TOTAL POINTS POSSIBLE | Studio D Architects, PA | Williams Design Group |
| Technical Approach | 800 | 520 | 540 |
| Qualifications/Competence | 1000 | 700 | 700 |
| Capacity/Capability | 1000 | 675 | 625 |
| Management Sturcture/Approach | 400 | 260 | 260 |
| References | 400 | 240 | 320 |
| Clarity | 400 | 270 | 260 |
| Rating Sheets Raw Scores | 4000 | 2665 | 2705 |
| Subtract Highest Scorer | | 410 | 375 |
| Subtract Lowest Scorer | | 265 | 310 |
| Rating Sheet Net Score | | 1990 | 2020 |
| Top Net Score Minus 10% | | 1962.0 | 1962.0 |
| Qualifies for Interview or Phase II of Evaluation | | Yes | Yes |
| PHASE I - INTERVIEW EVALUATION RESULTS | | 0 | 0 |
| TOTAL PHASE I SCORES | | 1990 | 2020 |
| TOP PHASE I SCORE | | 2180 | 2180 |
| TOP PHASE I SCORE MINUS 10% | | 1962.0 | 1962.0 |
| PROCEED TO PHASE II EVALUATION | | PROCEED | PROCEED |
| PHASE II - EVALUATION REPORT | | | |
| DEDUCTION FOR PROJECTS IN PROGRESS | | | |
| Number of Committee Raters | 8 | 8 | 8 |
| CLC Projects in Progress by Respondent | | | |
| Deduction (10 points per project X number of raters) | | 0 | 0 |
| TOTAL PH. I & II SCORES W/O PREFERENCE | | 1990 | 2020 |
| LOCAL/STATE PREFERENCE | | Local ? (Yes or No) | Local ? (Yes or No) |
| LOCAL? (YES or NO) | | Yes | Yes |
| If "YES", Add (Total Phase I Score X .05%) | | 100.0 | 101.0 |
| TOTAL PH. I & II SCORES W/O COST FACTOR | | 2090.0 | 2121.0 |

AIA[®] Document B102[™] – 2007

Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services

AGREEMENT made as of the Nineteenth day of July in the year Two Thousand Eleven
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

City of Las Cruces
P. O. Box 20000 (mail)
700 North Main
Las Cruces, New Mexico 88001
Project Management Telephone Number: 505-541-2502
Project Management Fax Number: 505-541-2904

and the Architect:
(Name, legal status, address and other information)

ASA Architects
201 North Alameda
Las Cruces, New Mexico 88005
Telephone Number: 575-526-3111
Fax Number: 575-523-9667

for the following Project:
(Name, location and detailed description)

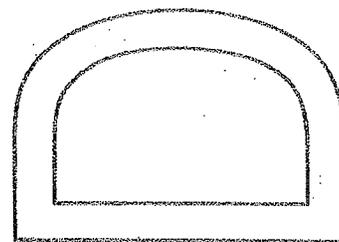
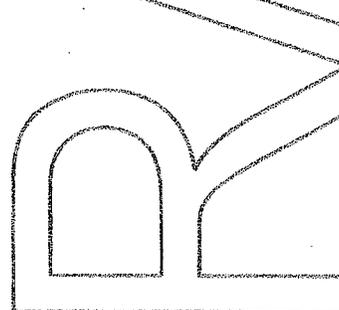
Term Contract for Architectural and Engineering Services, RFP No. 11-12-303
Various City of Las Cruces facilities
One year term contract for architectural and engineering services as outlined in
RFP 11-12-303; renewable up to three times in succeeding one year increments.

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.



ELECTRONIC COPYING of any portion of this AIA[®] Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

TABLE OF ARTICLES

| | |
|---|------------------------------|
| 1 | ARCHITECT'S RESPONSIBILITIES |
| 2 | OWNER'S RESPONSIBILITIES |
| 3 | COPYRIGHTS AND LICENSES |
| 4 | CLAIMS AND DISPUTES |
| 5 | TERMINATION OR SUSPENSION |
| 6 | COMPENSATION |
| 7 | MISCELLANEOUS PROVISIONS |
| 8 | SPECIAL TERMS AND CONDITIONS |
| 9 | SCOPE OF THE AGREEMENT |

ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

§ 1.1 The Architect shall provide the following professional services:

(Describe the scope of the Architect's services or identify an exhibit or scope of services document setting forth the Architect's services and incorporated into this document in Section 9.2)

See Exhibit A (AIA Document B201 Exhibit A-2007); AE Term Contract 11-12-303

§ 1.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 1.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 1.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 1.5 The Architect shall maintain the following insurance for the duration of this Agreement:
(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

- .1 Professional Liability

(Paragraphs deleted)

Errors and Omissions Professional Liability insurance is required of the Architect in the amount of \$1,000,000.00

ARTICLE 2 OWNER'S RESPONSIBILITIES

§ 2.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 2.2 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 2.3 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of consulting services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 2.4 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 2.5 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

ARTICLE 3 COPYRIGHTS AND LICENSES

§ 3.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 3.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 3.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Sections 5.3 and 5.4, the license granted in this Section 3.3 shall terminate.

§ 3.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 3.3.1.

§ 3.4 Except for the licenses granted in this Article 3, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 4 CLAIMS AND DISPUTES**§ 4.1 GENERAL**

§ 4.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 4.1.1.

§ 4.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction, if applicable. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 4.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 5.7.

§ 4.2 MEDIATION

§ 4.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to resolution in accordance with this Article. The aggrieved party shall notify the other party of the dispute within reasonable time after a potential dispute is identified by either party. Thereafter, each party shall nominate a senior officer of its management to meet to resolve the dispute by direct negotiation. Should the matter remain unresolved after direct negotiation, then the dispute shall be resolved by mediation in accordance with the New Mexico Public Works Mediation Act, regardless of this Agreement being an agreement for architect's services and not for a public works project. The parties shall agree on the mediator.

§ 4.2.2 If the parties do not resolve a dispute through mediation pursuant to this Section 4.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

- Arbitration pursuant to Section 4.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

(Paragraphs deleted)

§ 4.3 ARBITRATION

§ 4.3.1 Either party shall pursue resolution of the dispute by arbitration in accordance with the New Mexico Uniform Arbitration Act; provided however in the event the parties are unable to reach agreement to arbitrate under terms reasonably acceptable to both parties, either party may pursue resolution in any court having jurisdiction.

(Paragraphs deleted)

§ 4.3.4 CONSOLIDATION OR JOINDER

§ 4.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 4.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration,

provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 4.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 4.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

ARTICLE 5 TERMINATION OR SUSPENSION

§ 5.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 5.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 5.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 5.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 5.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 5.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 5.7.

§ 5.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 5.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 3 and Section 6.3.

ARTICLE 6 COMPENSATION

§ 6.1 The Owner shall compensate the Architect for services described in Section 1.1 as set forth below, or in the attached exhibit or scope document incorporated into this Agreement in Section 9.2.

(Insert amount of, or basis for, compensation or indicate the exhibit or scope document in which compensation is provided for.)

Compensation shall be based on the Architect's fee proposal as itemized in Exhibit B consisting of Matrix One and Matrix Two, and as subsequently negotiated on an individual work order basis.

§ 6.2 Reimbursable Expenses are in addition to compensation for the Architect's professional services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence away from Las Cruces; excluding any Architect's consultants not residents of Las Cruces, when traveling to Las Cruces away from their respective locales;
- .2 teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents; when prepared for delivery to the Owner for use and / or review by the Owner;
- .5 Postage, handling and delivery of documents prepared for delivery to the Owner for use and / or review by the Owner;
- .6
- .7 Renderings, models, and mock-ups not prepared by the Architect, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 6.2.1 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants
 (Paragraphs deleted)
 plus an administrative fee of ~~ten percent~~ (10%) of the expenses incurred.

(Paragraph deleted)

§ 6.3 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 5.5, or the Architect terminates this Agreement under Section 5.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of the Project as follows:

~~Compensation for use of Architect's Instruments of Service shall be negotiated upon such termination.~~

§ 6.4 PAYMENTS TO THE ARCHITECT

§ 6.4.1 An initial payment of ~~zero~~ (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 6.4.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid ~~thirty~~ (30) days after the invoice date shall bear interest at the rate at the rate allowed by New Mexico statutes.
 (Insert rate of monthly or annual interest agreed upon.)

~~N/A~~

§ 6.4.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 6.4.4 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 4.3.

§ 7.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 7.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 7.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 7.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 7.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 7.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 7.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 8 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

~~As allowed by written amendment or modification subsequent to the signing of this Agreement.~~

ARTICLE 9 SCOPE OF THE AGREEMENT

§ 9.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 9.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B102-2007, Standard Form Agreement Between Owner and Architect
- .2 City of Las Cruces RFP No. 11-12-303
Term Contract for Architectural-Engineering Services
Including all addenda and schedules issued with it.
- .3 Other documents:
(List other documents, including the Architect's scope of services document, hereby incorporated into the Agreement.)

~~AIA Document B201-2007, Standard Form of Architect's Services
Design and Construction Contract Administration~~

~~ASA Architects proposal entitled:~~

Term Contract Architectural-Engineering-Professional Services
CITY OF LAS CRUCES
REP #10-11-303, May 13, 2011 *

*REP #11-12-303 is erroneously identified as 10-11-303.

ASA Architects fee proposal consisting of Cost Matrix 1 and Cost Matrix 2,
attached to this agreement as Exhibit B.

This Agreement entered into as of the day and year first written above.

OWNER

ARCHITECT

(Signature)

Purchasing Manager City of Las Cruces

(Printed name and title)

(Signature)

Ted E. Shelton President / Principal Offeror

(Printed name and title)

